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File No. B. Land improvement/42

Legal Department

B BRANCH

Subject:— Governors Bill No. XXVIII of 1942

P.67/E

Born ~~No~~ XXVII of 1943

File No. B. Land Improvement/42

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DRAFT REPLY

Office of the R.L.A.

A revised draft Bill is sent herewith.

2. Clause 2.(a) The expression "bund" or "embrankment" has not been used anywhere in the body of the revised Bill. The definition of this exp[illegible] has therefore become unnecessary and has been deleted from clause 2 of the revised draft Bill.

(b) Sub-Clause (3) of this caluse in the R.D. draft Bill does not state by whom the Inquiry Officer is to be appointed. It is presumed that the appointment is to be made by the Provincial Government. Sub-clause (3) of clause 2 of the revised draft Bill provides accordingly.

(c) The definition of the expression "scheme" has been suitably revised from the drafting point of view.

(d A definition of the expression Director of Agriculture" which is used ... caluse 3 is necessaryand has been acordingly inserted in sub-clause (8) of clause 2 of the revised draft Bill.

3. Clause 3 of the R.D. draft Bill L- The provision contained in sub-claue (2) (i) of this clause in the R.D. draft Billnas been incorporated in clause 4(1) of therevised draft Bill. The provisioninsub-clause (2) (ii) in the R.D. draft Bills unnecessary and has therefore been deleted from clause 3 of hthe revised draft Bill

4. Clause 4 of the R.D. Draft Bill :-

provisions contained in this clause have b
embodied in clause 4(1) of the revised draft
Bill.

5. Clause 4(2) of the revised draft Bill:-
The R.D. draft Bill does not state who shall
prepare the draft land improvement scheme and
the particulars which shall be contained in
such scheme. It will be necessary to provide
for the matters. A suitable provision has,
therefore, been inserted in clause 4(2) of the
revised draft Bill. After the R.D. has
drafted the portion to be inserted in this
behalf, R.D. will no doubt throw the case for
scrutiny in this office.

6. Clause 5 of the R.D. draft Bill:-
Under clause 4(1) of the revised draft Bill,
a board is empowered to direct the preparation
of a scheme for any area within its
jurisdiction. In view of this provision, a
separate provision as in clause 5 of the R.D.
draft Bill is unnecessary and has therefore
been deleted from the revised draft Bill.

7. Clause 6 of the R.D. draft Bill.
The provision contained in this clause has
been incorporated in clause 16 of the revised
draft Bill.

8. Clause 7 of the R.D. draft Bill.-
(a) Sub-clause (1) of this clause
provides that a copy of the scheme shall be
kept for inspection in the village concerned
and at the headquarters of the taluka and

that a notice shallbe published that a scheme has been prepared and can be seen at the places mentioned. It is desirable to provide for the palces in the village and at the headquarters where the copy of the scheme will be kept for inspection. Clause 5 of the revised draft Bill provides therefore that the copy of the scheme shall be kept at such places as the Collector may direct in the village and at the headquarters. The words "or mahal" have been inserted in the clause to cover cases where the area of the scheme may be within a 'mahal'.

b) The expression 'Revenue Records' used in the R.D. draft clause has not been defined anywhere. The expression 'land records' which is defined in section 3(26) of the Bombay Land Revenue Code has, therefore, been substituted for this expression in clause 5 of the revised draft Bill and also in clause 7 of the revised draft Bill which corresponds to clause 8 of the R.D. draft Bill

9. Clause 10 of the R.D. draft Bill:-

(a) A new sub-clause (iv) has been inserted in clause 8 of the revised draft Bill providing for specifying in the report to be made by the Inquiry Officer the works be carried out under the scheme and the including the Crown who shall carry the works.

(b) Sub-Clause(c) of the R.D. draft clause provides for specifying in the report the person other than the owners of lands

who will be benefitted by any work under the scheme and the proportion if any in which they shall contribute to the cost of the work. It is presumed that the amount of such contribution is to be paid to the person executing the work under the scheme. The clause has been revised accordingly (see clause 8(1) (iv) of the revised draft Bill)

(c) The expression used in clause 8 and in clauses 9 and 12 of the revised draft Bill is "the Crown" in view of section 172 of the Government of India Act, 1935

(d) Sub-Clause (f) of the R.D. draft clause provides for specifying in the report of the Inquiry Officer the person on whom shall lie the duty of maintaining the works and from whom the costs of maintenance shall be recovered. This provision appears to be out of place in this clause and has therefore been deleted from this clause. The provisions regarding maintenance etc. are included in clause 13 and 14 of the revised draft Bill

10. Clause 11 (2) of the R.D. draft Bill. In view of the provision made in clause 20 of the revised draft Bill providing for delegation of the powers of the Provincial Government of the any officer the words "or such authority as may be prescribed" in the R.D. draft clause are unnecessary and have been deleted from clause 9(2) of the revised draft Bill.

11. Clause 12 of the R.D. draft Bill

In place of the provision in the R.D. draft clause that the owners of lands shall have such rights and shall be subject to such liabilities as are conferred or imposed upon them under the scheme, a provision has been made in clause 10 of the revised draft Bill that the scheme shall have effect as if it were enacted in this Act (cf. section 40(3) of the Bombay Town Planning Act).

12. Clause 13 of the R.D. draft Bill.

In view of the provision made in clause 8(1)(iv) of the revised draft Bill, there will be a liability on the Crown also to construct any work under the scheme. The department of Government by which such work will be carried out can be settled by the issue of executive instructions. No such provision as in clause 13 of the R.D. draft Bill needs to be made in the Bill. The clause has, therefore, been deleted from the revised draft Bill.

13. Clause 14 and 15 of the R.D. draft Bill.

These clauses provide for contribution being paid by the Crown and other persons who are benefited by any work under a scheme. It is presumed that the contribution is to be paid to the owner of the land who constructs the work. A provision to this effect has been made in clause 12(1) of the revised draft Bill. The R.D. draft Bill does not provide a means for recovery of such contribution if it is not paid by the person benefited. A means has

been provided for in clause 12(2) of the revised draft Bill. The R.D. should verify whether the provision is suitable from the administrative point of view.

14. Clause 17 of the R.D. draft Bill :-

The exact intention underlying the provision in this clause is not clear. The intention presumably is that if in any case, the owners of lands concerned in any scheme choose to have such scheme executed in accordance with the provisions of Chapter XI of the Bombay Co-operative Societies Act, 1925, the scheme made under the Land Improvements Act should be dropped or withdrawn. Once a scheme has come into force, it would not be proper thereafter to permit its withdrawal. Withdrawal may be permitted only before the scheme comes into force. In view of this position, a separate provision as in clause 17 of the R.D. draft Bill does not appear necessary. It has, therefore, been deleted from the revised draft Bill.

15. Clause 18 of the R.D. draft Bill

(a) The R.D. draft clause provides for entering in the record of liabilities inter alia any prevailing custom or usage deciding individual or collective liability with regard to the construction, maintenance and repairs of land improvement works. The object of making such entry is not clear since there can hypothetical be no established usage or custom relating to works which have

yet to be carried out. The liabilities will have to be entered in the record in accordance with the decision of the officer appointed to prepare the scheme, subject to the provisions regarding appeal provided in the Bill. The proposed entry is unnecessary and has therefore been deleted from clause 13(1) of the revised draft Bill.

(b) It is unnecessary also to make entries in the record relating to construction of works. References, therefore, to construction of works have been deleted from clause 13 (1) of the revised draft Bill ..

(c) It is desirable that the record should contain entries showing the rights of owners regarding the use of the works carried out under the scheme. A new entry to this effect has therefore been included in clause 13(1) of the revised draft Bill (see clause 13(1)(iv) of the Bill).

6. Clause 21 of the R.D draft Bill. This clause provides for settlement by the Collector of disputes in regard to the construction, maintenance, repair or use of any work under the scheme etc. In view of the provisions contained in clause 13 and 14 of the revised draft Bill, the provision in the R.D. draft clause regarding holding the inquiry in a summary manner is covered by clause 17 of the revised draft Bill. this clause is unnecessary and has therefore been deleted from the revised draft Bill.

17. Clause 22 of the revised draft Bill :- A new clause has been inserted in the

revised draft Bill providing for certain officers referred to in the Bill to be deemed to be public servants within the meaning of the Indian Penal Code.

13. Clause 23 of the R.D. draft Bill :- The whole clause has been recast from the drafting point of view. (See clause 25) of the revised draft Bill). The R.D. should verify whether it carries out its intention.

14. Several other changes have been made in the draft Bill from the drafting point of view. The R.D. should verify whether the Bills as revised carries out its intention. ~~provisions~~ The R.D. should also verify whether and provisions of the Bill are suitable and complete from the administrative point of view on return of the papers to this office (See para 5 above) the aspects of concurrence, and repugnancy will be explained.

Sd/-
28/3

Superintendent of Legal Affairs.

U.O. to R.D., No. 2810 , dated 28.3.1942

Ir/27/4

Office of the H.L.A.]

The necessary changes have been incorporated in the draft Bill. The Revenue Department should verify whether they carry out its intentions.]

2.] As regards sub-clause (2) (vi) of clause 4, it is for the Revenue Department to consider whether at the time when the draft scheme is prepared it would be possible to state the proportion in which persons benefited by the scheme shall pay their contribution towards the cost of the work.]

3.] The H.L.A.] does not advise the inclusion of "ownership and tenure" in clause 4(2) (ii) or clause 8(1) (ii) of the Bill, as proposed by the Revenue Department.] The inclusion is resisted on the ground that if complicated points of ownership and tenure are settled under the scheme with the speedy procedure contemplated, clause 7(2) will be of no assistance to put titles and tenures right the moment the scheme becomes final under clause 8 and acquires the force of law under clause 10, Titles and tenures for purposes other than those of the Act should be left to be determined by the Civil Court.

4.] The question of concurrence, virco and reluctancy is being considered and a separate note thereon will be sent to the Revenue Department very shortly.]

Sd/-
20/4
Superintendent of Legal Affairs.

U.O.] to R.D.] , No 3905 , dated the 21st April 1942

Ly/27/4

 P17

The subject matter of the Bill falls under entries 19,20 and 21 of the Provincial Legislative List and entries 2,4,5, and 8 of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, (See clauses 13(7),13(8),13(9), 17, 19 and 23(2) of the Bill). The Bill also applies to Crown Lands (entry 10 of List I and entry 8 of List II). The provisions of clause 19 of the Bill are repugnant to the provisions of the Indian Registration Act, 1908 which is an existing Indian law relating to a matter enumerated in the Concurrent Legislative List. Section 13 is repugnant to the existing provisions of the Evidence Act, 1872, which is an existing Indian law relatable to entry 5 of the Concurrent List. The Bill will therefore have to be reserved for the consideration with reference to sub section 107(2)(a) Govt. of of the Governor General of India Act and para 2 of the Proclamation.

2. Under executive instructions the Bill requires the previous approval of the Governor General before enactment.

3. The Statement of Objects and Reasons sent by Secretary, H.D. does not require any alteration from the legal point of view.

Sd/-
6/5

Remembrancer of Legal Affairs.

U.O. to H.D., No 3770 , dated the 5th May 1942

Ir/17/4

Office of the A.L.A.

Paragraph 2 of the R.D. note dated 28-5-43:- The following clause may be added to the Bill namely:-

Expenditure incurred by Provincial Government to be charged on revenue of Province

"20. The expenditure incurred by the Provincial Government in pursuance of anything done under this Act shall be charged on the revenues of the Province".

The long title and preamble need to be consequentially amended with the addition of words for charging certain expenditure on the revenues of the Province. The said amendment will fall under section 63(1)(c) of the Governor of India Act, 1935 but as this section is amended by the Governor's Proclamation under section 93 (No. 201 dated 4-11-1939), the question of recommendation does not arise.

2. Paragraph 4 of the R.D. note :- The view then by the R.D. is correct. It is not necessary to add the words as suggested by A(x) to clause 25(3)

Sd/- 2/6

Secretariat of Legal Affairs.

U.O. to R.D.No. 4557, dated the 3rd June 1943.

LA/2/4

No. 9949
Legal Department,
Bombay Castle, 12th December 1948

From

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Secretary to the Government of Bombay

To,

The Secretary to the Governor of Bombay

Subject:- A Bill to provvide for the making and execution of schemes relating to the construction of tanks, embankments and other works, the prohibition and controal of grazing for the purposes of preservation of soil, prevention of soil erosion, improvement of water supply and other matters in order thereby to protect and improve lands and crops in the Province of Bombay and for charging certain expenditure on the revenues of the Province.

Sir

With reference to your Memorandum No 201(64) dated the 24th June 1942 addressed to the Revenue Department, on the above subject, I am directed to forward herewith a copy of the Bill to provide for the making and execution of schemes relation to the construction of tanks, embankments and other works, the prohibition and control of grazing for the purposes of preservation of soil, prevention of soil erosion, improvement of water supply and other matters in order thereby to protect and improve lands and crops in the Province of Bombay and for charging certain expenditure on the revenues of the Province, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special respo ty of the Governor under section 52 (1) of the Government of India Act, 1935, or falls within the purview of clause (a),(b),(c), or (d) of Paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject matter of the Bill falls under entries 10,20 and 21 of the Provincial Legislative List and entries 2,4,5 and 8 of the Concurrent Legislative List in the Seventh Schedule to Government of India Act, 1935. The Bill also applies to Crown Lands (entry 10 of List I and entry 8 of ..... II). The provisions of clause 13 of the Bill are repugnant to the provisions of the Indian Registration Act, 1908, which is an existing Indian Law relating to a matter enumerated in entry 3 of the Concurrent Legislative List. Clause 13 is repugnant to the existing provisions of the Indian Evidence Act, 1872, which is an existing Indian Law relatable to entry 5 on the Concurrent List. The Bill will therefore have to be reserved for the consideration of the Governor General with reference to paragraph (2) of the Proclamation of section 107(2) of the Government of India Act, 1935.

4. I also forward herewith six spare copies of the Bill, out of which five copies are for transmission to the Secretary to the Governor General(Public).

Your obedient servant,

Sd/- P.H. Wood
Secretary to the Government of Bombay
Local Department

through:

The Secretary to the Government of Bombay,
Revenue Department.

Er/28/4

Annexure

The Bombay Land Improvement Schemes Bill, 1942, has been forwarded separately through the Revenue Department to the Secretary to the Governor for obtaining the assent of His Excellency the Governor General.

2. A draft notification under section 92(1) of the Government of India Act, 1935, for applying the proposed Act to the partially excluded areas in this Province is furnished herewith. If it is decided to apply the Act to the said areas, the notification should be published in the Bombay Government Gazette on or after the date on which the Act will be published in the Bombay Government Gazette.

Sd/-
12/12

Secretary to Government

Ujed to R.D., No 9050 , dated 12-12-1942

ms/23/4

NOTIFICATION

Revenue Department.

Bombay Castle, 1942

No. In exercise of the powers conferred by sub-section(1) of section 93 of the Government of India Act, 1935 the Governor of Bombay is hereby pleased to direct that the Bombay Land Improvement Schemes Act, 1942 (Bom. of 1942) shall apply to the partially excluded areas in the Province of Bombay.

By order of the Governor of Bombay,

Secretary to Government.

Rv/29/4

No. 201 (64)
Office of the Governor's Secretary,
Government House,
Bombay 22nd January 1943

57

From

J.B. Irwin, Esquire, CIE.DSO.MC.ICS,
Secretary to the Governor of Bombay

To:

The Secretary to Government,
Legal Department, Bombay

Subject : The Bombay Land Improvement Schemes Bill, 1942

Sir,

With reference to your letter No 6040, dated the 12th November 1942, on the above subject, I am directed to forward herewith the copy of the Bombay Land Improvement Schemes Bill, 1942, with the request that Government's assent as signified thereon.

Your obedient servant,

Sd/-

Secretary to the Governor of Bombay

Mr/28/4

Publication of the Bombay Land Improvement Schemes Act, 1942.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5A/9A/7

Bombay Castle, 25th January 1943

Letter to the Secretary to the Governor, No.0042, dated the 12th December 1942.

Letter from the Secretary to the Governor, No201(64) dated the 23rd January 1943

"With reference to your letter No. 0042, dated the 12th December 1942, on the above subject, I am directed to forward herewith the copy of the Bombay Land Improvement schemes Bill, 1942, with His Excellency the Governor General's assent signified thereon".

RESOLUTION. The law should be published as Bombay Act No. XXVIII of 1943, in the Bombay Government Gazette dated the 25th January 1943.

2. The Act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,
Sd/- S.L. Choudhari

for { P.H. Hoey
Secretary to Government

To,

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be furnished to the Legal Department) (with a copy of the Act
The Revenue Department.
The Oriental Translator to Government
The Secretary to the Bombay Legislative Council
The Secretary to the Bombay Legislative Assembly

Er/20/4

15/284

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

MONDAY, 25TH JANUARY 1943.

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

	PAGES
BOMBAY ACT No. XXVIII OF 1942—An Act to provide for the making and execution of schemes relating to the construction of tanks, embankments and other works, the prohibition and control of grazing for the purposes of preservation of soil, prevention of soil erosion, improvement of water supply and other matters in order thereby to protect and improve lands and crops in the Province of Bombay and for charging certain expenditure on the revenues of the Province	31-44

The following Act made by the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, having been assented to by the Governor General on the 15th January 1943 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXVIII OF 1942.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 25th January 1943.)

An Act to provide for the making and execution of schemes relating to the construction of tanks, embankments and other works, the prohibition and control of grazing for the purposes of preservation of soil, prevention of soil erosion, improvement of water supply and other matters in order thereby to protect and improve lands and crops in the Province of Bombay and for charging certain expenditure on the revenues of the Province.

WHEREAS it is expedient to provide for the making and execution of schemes relating to the construction of tanks, embankments and other

works, the prohibition and control of grazing for the purposes of preservation of soil, prevention of soil erosion, improvement of water supply and other matters in order thereby to protect and improve lands and crops in the Province of Bombay and for charging certain expenditure on the revenues of the Province;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature; 26 Geo. 5, ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Land Improvement Schemes Act, 1942.

(*2*) It shall extend to the whole of the Province of Bombay.

(*3*) It shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Board" means a Board constituted under section 3.

(*2*) "Director of Agriculture" means the Director of Agriculture as defined in section 64C(*c*) of the Bombay Co-operative Societies Act, 1925. Bom. VII of 1925.

(*3*) "Inquiry Officer" means an officer appointed as such by the Board.

(*4*) "owner" includes an owner in severalty, in common or joint, an occupant as defined in the Bombay Land Revenue Code, 1879, a privileged occupant as defined in the Khoti Settlement Act, 1880, a tenant who is deemed to be a protected tenant under section 3 of the Bombay Tenancy Act, 1939, and a mortgagee in possession. Bom. V of 1879. Bom. I of 1880. Bom. XXIX of 1939.

(5) "prescribed" means prescribed by rules made under this Act.

(6) "Provincial Land Improvement Officer" means an officer appointed as such by the Provincial Government.

(7) "scheme" means a land improvement scheme prepared under this Act.

(8) The words and expressions used in this Act, but not defined, shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879.

Bom. V of 1879.

CHAPTER II.

CONSTITUTION OF BOARDS AND PREPARATION OF LAND IMPROVEMENT SCHEMES.

Constitution of Boards.

3. (1) The Provincial Government shall constitute in each division a Board consisting of the Commissioner, the Conservator of Forests and the Director of Agriculture, for the purpose of carrying out the provisions of this Act.

Where an officer is appointed to be the Provincial Land Improvement Officer, he shall be the Secretary to the Board. In other cases the Board shall appoint its own Secretary.

(2) If there is a difference of opinion among the members of the Board regarding any question under the provisions of this Act the decision of the majority of the members shall prevail.

Power of Board to direct preparation of land improvement scheme and matters for which scheme may be prepared.

4. (1) The Board may direct the preparation of a land improvement scheme for any area within its jurisdiction. A scheme may make provision for any of the following matters, namely :—

(i) preservation and improvement of soil;

(ii) prevention of erosion of soil;

(iii) improvement of water supply;

(iv) introduction of dry farming methods;

(v) improvement in the methods of cultivation;

(vi) reclamation of waterlogged land or of land from the sea;

(vii) prohibition or control of grazing ;

(viii) control and maintenance of tree growth ;

(ix) such other matters not inconsistent with the objects of this Act as may be prescribed.

(*2*) On such direction being issued by the Board, any person who may be appointed by the Board in this behalf shall prepare in accordance with such instructions as it may issue a draft scheme containing the following particulars, namely :—

(i) the objects of the scheme ;

(ii) the area of the lands to be included in the scheme ;

(iii) the persons, including the Crown, affected by the scheme ;

(iv) the works, if any, to be carried out under the scheme, and the owners of the lands including the Crown who shall carry them out ;

(v) the agency through which the works shall be carried out ;

(vi) when any work under the scheme is likely to benefit persons, including the Crown, other than the owners of the lands by whom it is carried out, the names of such persons and the proportion, if any, in which they shall pay to the owner carrying out the work their contribution towards the cost of the work ; and

(vii) such other particulars as may be prescribed.

Publication of scheme and inviting claims and objections.

5. (*1*) The draft scheme prepared under section 4 shall be submitted to the Board ; the Board shall, if it approves the scheme with or without modifications, forward a copy thereof along with the maps or plans, if any, to the Collector for being kept for inspection at such places as the Collector may direct in the village and at the head-quarters of the taluka or mahal within the limits of which the lands proposed to be included in the scheme are situated and appoint an Inquiry Officer for the scheme.

(2) A general notice shall be published in the Official Gazette and in such local newspapers, if any, as the Collector may direct, intimating that the scheme has been prepared and can be inspected at the said places. Separate notices to the same effect shall, as far as may be possible, be also served on all owners of the lands affected by the scheme and on all persons shown in the land records to be interested in the lands. The general and separate notices shall require all persons affected by the scheme who wish to make any claims or to submit any objections to appear personally or by agent before the Inquiry Officer on the date and at the place mentioned therein. Such date shall not be earlier than thirty days after the date of publication of the general notice of the scheme in the Official Gazette.

Inquiry by Inquiry Officer.

6. On the date fixed in the notices issued under section 5 or any other day to which the inquiry may be adjourned, the Inquiry Officer shall inquire into the claims and objections (if any) which are made or submitted pursuant to the notices and shall hear and decide any other matter which may be required to be heard and decided by or under the provisions of this Act.

Decision of disputed claims.

7. (1) If there is a dispute as to the ownership or possession of any land proposed to be included in the scheme, the Inquiry Officer shall decide the dispute in accordance with the entries relating to the land in the land records. If there is no such record, or if in the opinion of the Inquiry Officer the entries in the records are inaccurate, he shall refer the dispute to the Collector for decision. When the Collector decides the dispute, he shall communicate his decision to the Inquiry Officer, and the decision shall, subject to the provisions of sub-section (2), be final for the purpose of the inquiry under this Act.

(2) In the event of a civil court passing a decree which is inconsistent with the decision, the decision shall be corrected, modified or rescinded in accordance with the decree, after it has been brought to the notice of the Inquiry Officer or the Board either by the civil court or by some person affected by the decree.

Report of Inquiry Officer.

8. (*1*) After the inquiry under section 6 is completed, the Inquiry Officer shall make a report to the Board containing the following particulars, namely :—

(i) the action which it is proposed to take under the scheme ;

(ii) the area of the lands to be included in the scheme ;

(iii) the persons, including the Crown, affected by the scheme ;

(iv) the works, if any, to be carried out under the scheme, and the owners of the lands including the Crown who shall carry them out ;

(v) the agency through which the works shall be carried out ;

(vi) when any work under the scheme is likely to benefit persons, including the Crown, other than the owners of the lands by whom it is carried out the names of such persons and the proportion, if any, in which they shall pay to the owner carrying out the work their contribution towards the cost of the work ;

(vii) such other particulars as may be prescribed.

(*2*) The report shall be published by the Board in the village and at the headquarters of the taluka or mahal within the limits of which the lands included in the scheme are situate, and separate notices of the publication of the report shall, as far as may be practicable, be given to all persons mentioned in clauses (iii), (iv) and (vi) of sub-section (*1*).

(*3*) Any person aggrieved by the report of the Inquiry Officer may, within a period of thirty days from the date of publication of the report, appeal to the Board and the Board may pass such order thereon as it thinks fit.

Power of Board to sanction scheme with or without modification.

9. (*1*) On receipt of the report and after deciding such appeals as may have been made under section 8, and making such inquiry as it may think fit, the Board may sanction the scheme, with or without modification, if not less than .66 per cent. of the total number of the owners of the lands included in the scheme other than the Crown or in the alternative owners owning in

aggregate not less than 66 per cent. of the total area of the lands included in the scheme other than the Crown give their consent to the making of the scheme:

Provided that the Provincial Government may, on the recommendation of the Board and for reasons to be recorded, sanction any scheme notwithstanding that the owners who have given their consent are less than 66 per cent. of the total number of the owners, and own in aggregate less than 66 per cent. of the total area of the lands.

(2) Any person aggrieved by the decision of the Board under sub-section (1) may, within a period of thirty days from the date of the decision, appeal to the Provincial Government which may pass such order thereon as it thinks fit.

(3) The scheme as sanctioned under sub-section (1), subject to any modification that may be made in appeal under sub-section (2), shall be published by the Board in the Official Gazette and in such other manner as may be prescribed and shall, on such publication, be final.

Effect of scheme.

10. On the date on which the scheme is published in the Official Gazette under sub-section (3) of section 9, it shall come into force and shall have effect as if it were enacted in this Act.

CHAPTER III.

EXECUTION OF THE SCHEME.

Power to enforce scheme.

11. (1) After a scheme has come into force under section 10, the Collector shall, in consultation with the Board, appoint an officer to execute it.

(2) Such officer shall give a notice in the prescribed form to all the owners of the lands included in the scheme requiring them to carry out within a specified period such works as they are liable to carry out under the scheme.

(3) Where the owner of any land included in the scheme is the Crown, the Department of Government which has the control or management of such land shall carry out the works which the Crown is liable to carry out under the scheme.

(4) If an owner fails to carry out any work to the satisfaction of the officer within the period specified, or at any time expresses in writing to the officer his inability to do so, the officer may himself get the work carried out and the expenses incurred by the officer for the purpose shall be recoverable from the person in default.

Liability of persons whose lands are not included in scheme to contribute.

12. (1) If, in consequence of any work carried out by the owner of any land under the scheme any other person, including the Crown, is likely to be benefited, he shall pay such amount to the owner of the land as contribution as the Board may, subject to the provisions of the scheme, determine:

Provided that the Provincial Government may excuse payment of such contribution in whole or in part in respect of any work carried out by it.

(2) The amount shall be paid within such time as may be specified by the Board. On the failure of any person to pay the amount within the specified time, the Collector or any person authorised by him in that behalf shall recover it from him and shall pay the same to the owner of the land.

CHAPTER IV.

MAINTENANCE, REPAIR AND USE OF WORKS CARRIED OUT UNDER THE SCHEME.

Record of rights and liabilities.

13. (1) The officer appointed under section 11 shall in the prescribed manner prepare a record of rights and liabilities containing the following particulars:—

(i) the names of the owners of the lands included in the scheme;

(ii) the liabilities of such owners for the maintenance and repair of any works under the scheme;

(iii) a map and plan, if any, showing the situation, nature and dimensions of the said works;

(iv) the rights of the owners as regards the use of the works;

(v) such other matters as the Provincial Government may prescribe in this behalf.

(2) For the purpose of preparing the record of rights and liabilities the said officer or any officer empowered by him in this behalf may enter upon any land on which any work under the scheme is to be constructed or any adjacent land and may survey and demarcate the same.

(3) If a dispute exists on any matter which is not covered by the scheme but which it is necessary to decide for the purpose of preparing the record of rights and liabilities the said officer shall after making an enquiry decide the dispute.

(4) When the record of rights and liabilities is prepared under this section, a notice to this effect together with a copy of the record of rights and liabilities shall be published in the regional language of the district in every village and at the head-quarters of the taluka or mahal in which the lands to which it relates are situate.

(5) An appeal against any entry in the record of rights and liabilities published under sub-section (4) shall lie to the Collector if it is made within thirty days from the date of the publication of the record under sub-section (4).

(6) Subject to rules made in this behalf by the Provincial Government under section 24, the record of rights and liabilities may be revised from time to time by the Collector. Whenever the record is revised, a notice to this effect together with a copy of the record as so revised shall be published in the manner specified in sub-section (4).

(7) An entry in the record of rights and liabilities shall be relevant as evidence in any dispute as to the matters recorded and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

(8) In any suit or proceeding in which an entry made in the record of rights and liabilities is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector and if moved to do so by the Collector, shall make the Provincial Government a party to the same.

(9) Any suit or proceeding in which an entry made in the record of rights and liabilities under this section is directly or indirectly called in

question shall be rejected (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the publication under sub-section (*4*) or (*6*), as the case may be, of the copy of the record of rights and liabilities containing the said entry, or, if an appeal has been made under sub-section (*5*), from the date of the order passed by the Collector in such appeal.

Obligations of owners of lands to maintain and repair works.

14. (*1*) Every owner of land who is bound to maintain or repair any work in accordance with the entries in the record of rights and liabilities prepared under section 13, shall do so to the satisfaction of the Collector and within such time as he may fix.

(*2*) If an owner fails to maintain or repair the work within the time fixed by the Collector under sub-section (*1*), the Collector may authorise any other person who in his opinion is interested in the maintenance or repair of the work or any officer appointed by the Provincial Government in this behalf to maintain or repair it.

(*3*) The amount of the expenses incurred by such person or officer for maintaining or repairing the work shall be recovered from the owner and paid to such person or to the Provincial Government, as the case may be. If any dispute arises as to the amount of expenses incurred for maintaining or repairing the work, the decision of the Collector shall be final.

CHAPTER V.

MISCELLANEOUS.

Amounts to be recoverable as arrears of land revenue.

15. All amounts due under sections 11, 12 and 14 shall be recoverable as arrears of land revenue.

Right of entry.

16. For the purpose of preparing, sanctioning or executing any scheme, any person authorised by the Board or the Collector may, after giving such notice as may be prescribed, to the owner, occupier or other person interested in any land, enter upon, survey and mark out such land and do all acts necessary for such purpose.

Inquiries to be held summarily.

17. (*1*) Any authority other than a Board empowered under this Act to make an inquiry shall

make the inquiry in the manner provided for holding a summary inquiry under the Bombay Land Revenue Code, 1879, and all the provisions contained in the said Code relating to the holding of a summary inquiry shall, so far as may be, apply.

Bom. V of 1879.

(2) Such authority as well as a Board shall have the same powers for summoning and enforcing the attendance of any person and examining him on oath and compelling the production of documents as are vested in the revenue officers under the Bombay Land Revenue Code, 1879.

Bom. V of 1879.

Permission to owners to increase rent on account of improvements effected.

18. Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the owner of any land included in a scheme to enhance the rent payable by a tenant of the land by such amount and subject to such conditions as may be prescribed.

Registration of document, plan or map in connection with land improvement scheme not required.

19. (1) Nothing in the Indian Registration Act, 1908, shall be deemed to require the registration of any document, plan, or map prepared, made or sanctioned in connection with a scheme which has come into force.

XVI of 1908.

(2) All such documents, plans and maps shall, for the purpose of sections 48 and 49 of the Indian Registration Act, 1908, be deemed to be registered in accordance with the provisions of that Act:

XVI of 1908.

Provided that documents, plans and maps relating to the sanctioned scheme shall be accessible to the public in the manner prescribed.

Delegation of powers by Provincial Government.

20. The Provincial Government may by notification in the Official Gazette delegate to any officer any of the powers conferred on it by sub-section (2) of section 9 and sub-section (2) of section 14 of this Act.

Delegation of powers by Collector.

21. The Collector may delegate to any revenue officer subordinate to him any of the powers conferred on him by or under this Act.

Certain officers to be public servants.

22. The members and Secretary of a Board, the Inquiry Officer and any officer or person authorised or appointed by the Board, the Collector or the Provincial Government under sub-section (2) of section 4, sub-section (1) of section 11, sub-section (2) of section 12, section 16 or sub-section (2) of

section 25, as the case may be, shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860

Protection of persons acting in good faith and limitation of suits and prosecutions.

23. (*1*) No suit, prosecution or other legal proceedings shall be instituted against any public servant or person duly authorised under this Act in respect of anything in good faith done or intended to be done under this Act or the rules made thereunder.

(*2*) No suit or prosecution shall be instituted against any public servant or person duly authorised under this Act in respect of anything done or intended to be done, under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Power to make rules.

24. (*1*) The Provincial Government may, by notification published in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may be made to determine the following matters, namely:—

(*i*) the matters to be prescribed under clause (*ix*) of sub-section (*1*) and clause (*vii*) of sub-section (*2*) of section 4;

(*ii*) the manner in which notices under sections 5, 11 and 16 shall be given, served or published;

(*iii*) the particulars to be prescribed under clause (*vii*) of sub-section (*1*) of section 8;

(*iv*) the manner of publication of a scheme under sub-section (*3*) of section 9;

(*v*) the manner of preparing and revising the record of rights and liabilities under section 13 and the matters to be prescribed under clause (*v*) of sub-section (*1*) of the said section 13;

(*vi*) the extent of enhancement of rent and the conditions subject to which the enhancement may be made under section 18; and

(*vii*) the manner in which documents, plans and maps shall be made accessible to the public under section 19.

(3) The rules made under this section shall be subject to the condition of previous publication.

Power of Provincial Government to direct preparation of scheme in certain circumstances.

25. (1) Notwithstanding anything contained in this Act, the Provincial Government may direct the preparation of a land improvement scheme providing for any of the matters specified in sub-section (1) of section 4 in any area in which the Provincial Government declares that a state of famine or scarcity prevails or in which in the opinion of the Provincial Government a state of famine or scarcity is likely to prevail.

(2) On such direction being issued the person appointed by the Provincial Government in this behalf shall prepare in accordance with such instructions as the Provincial Government may issue a draft scheme containing the particulars specified in sub-section (2) of section 4 and a copy of the draft scheme shall be kept for inspection and a general notice regarding the scheme shall be published in the manner provided in section 5. After the expiry of thirty days from the date of such publication the Inquiry Officer whom the Board shall appoint for the purpose shall proceed to inquire into the claims and objections, if any, which may be made or submitted by any persons and shall hear and decide any other matter which may be required to be heard and decided by or under the provisions of this Act.

(3) After the inquiry under sub-section (2) is completed the Inquiry Officer shall make a report containing the particulars specified in section 8 to the Provincial Government through the Collector and the Board and thereupon the Provincial Government may sanction the scheme with or without modifications.

(4) After the Provincial Government has sanctioned the scheme under sub-section (3) the provisions of sections 10 to 23 and the rules made under section 24 shall apply in respect of the scheme as if it were sanctioned by the Board.

Expenditure incurred by Provincial Government to be charged on revenues of Province.

26. The expenditure incurred by the Provincial Government in pursuance of anything done under this Act shall be charged on the revenues of the Province.

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STATEMENT.

In spite of the excellent work done by agricultural and other departments connected with the improvement of land and its yield, the work of land improvement and increase in the yield of land has been hampered by certain limitations on the activities of these departments. It is known that bunding, construction of embankments, levelling, terracing, prohibition and control of grazing, etc. are the most effective measures for securing the maximum benefit from limited rainfall and that the cultivation of improved high yielding and drought resistant strains of crops in the areas of low or ill-distributed rainfall give excellent results. It is also known that water-logging and soil-erosion can be effectively checked by bunding, drainage and construction of embankments. These improvements cannot, however, be made on isolated survey numbers but must cover large areas where the holders must not only carry out the necessary work but maintain them, as the neglect of even a few holders may cause serious damage to the interests of the whole community. The planning and execution of these improvements, moreover, require technical advice and supervision which the individual cultivator cannot provide.

2. The Act seeks to remedy this state of affairs by setting up Permanent Divisional Boards for land improvement purposes (3) and by providing for the preparation of chemes of land development and their sanction by the Board (4 to 9), for execution of the schemes (10) and recovery of cost from those who cannot execute their share of the work (11), and of contributions from those who benefit from such works (12), and for maintenance of the works executed by a detailed record of rights and liabilities (13) and by the enforcement of these liabilities (14).

3. Provision has been made to secure the consent of 66 per cent. of the owners of the lands included in the scheme or, in the alternative, of owners who own 66 per cent. of the total area of the lands included in the scheme [9 (*1*)] but power has been reserved to dispense with this condition in certain cases so that a really good valuable scheme of land improvement may not be held up by local ignorance or factious spirit. Power has, in addition, been reserved (25) to have such schemes prepared for scarcity and famine areas without any such conditions.

4. Provision has also been made that expenditure incurred by Government in pursuance of the provisions of the Act shall be charged on the revenues of the Province.

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